

EXHIBIT A TO
UNITED STATES'
SENTENCING MEMORANDUM

U.S. Department of Justice

United States Attorney
Northern District of California

Federal Building
1301 Clay Street, Suite 340S
Oakland, California 94612

(510) 637-3707

FAX (510) 637-3724

April 6, 1998

Lisa Clark
Courtroom Deputy to the
Honorable Saundra Brown Armstrong
3rd Floor, Federal Courthouse
Oakland, Ca. 94612


Re: United States v. William Lusk III
Case No. CR-97-40048-SBA

Dear Lisa:

Enclosed for the Court's review is a copy of the **Amended Plea Agreement** signed by the parties. This case is on for sentencing on Tuesday, 4/21/98, at 9:30 a.m. Thanks Lisa.

Sincerely,

MICHAEL J. YAMAGUCHI
United States Attorney



GEORGE L. BEVAN, JR.
Assistant United States Attorney

cc: Robert Byers, Esq.

Ex. A

1 MICHAEL J. YAMAGUCHI
United States Attorney

2 JOHN W. KENNEDY
3 Chief, Oakland Office

4 GEORGE L. BEVAN, JR.
Assistant United States Attorney

5 1301 Clay Street, Suite 340S
6 Oakland, CA 94612
Telephone: (510) 637-3707

7 Attorneys for the Plaintiff

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)
11 Plaintiff,)

Case No. CR-97-40048-SBA

12 v.)

AMENDED PLEA AGREEMENT

13 WILLIAM LUSK, III,)

14 Defendant.)
15)

16 The United States of America and the defendant, by and through
17 their respective counsel, enter into this Amended Plea Agreement
18 pursuant to Rule 11(e)(1)(A) and (B) of the Federal Rules of Criminal
19 Procedure. This Agreement supersedes the Plea Agreement previously
20 entered into by the parties and filed with the Court on January 13,
21 1998.

22 DEFENDANT'S PROMISES

23 1. The defendant reaffirms his guilty plea to the offenses
24 charged in Counts One and Four of the Indictment (copy of Indictment
25 is attached), which the District Court accepted on or about January
26 13, 1998. Count One charges a violation of 18 U.S.C. § 922(g)(1),

1 felon in possession of a firearm in and affecting commerce. Count
2 Four charges a violation of 18 U.S.C. § 924(c), carrying a firearm
3 during and in relation to a drug trafficking crime.

4 2. The defendant further agrees not to seek to withdraw his
5 guilty plea, and agrees not to file a motion for a downward departure
6 under the Sentencing Guidelines. The defendant further agrees to
7 waive his right to appeal from any part of the judgment and commitment
8 order issued by the District Court other than an upward departure.
9 The defendant further agrees not to file any motion to collaterally
10 attack and/or for relief from his conviction or sentence including any
11 motion pursuant to the provisions of 28 U.S.C. § 2255. The defendant
12 further agrees not to appeal the District Court's denial of his motion
13 to suppress evidence.

14 GOVERNMENT'S PROMISES

15 3. In exchange for the defendant's promises set forth herein,
16 the government agrees to the defendant withdrawing his guilty plea to
17 Count Two of the Indictment, which the Court accepted on or about
18 January 13, 1998. The government further agrees to move, at the time
19 of sentencing, for the dismissal of Counts Two and Three of the
20 Indictment.

21 4. The government further agrees to recommend a term of
22 imprisonment at the lowest end of the Guideline range determined to be
23 applicable by the district court, and further agrees not to move for
24 an upward departure under the Sentencing Guidelines.

25 //

26 //

1 APPLICATION OF SENTENCING GUIDELINES

2 5. The parties understand that the United States Sentencing
3 Guidelines in effect at the time of sentencing apply to this case.
4 The parties further agree that the following calculations are
5 appropriate under the Guidelines.

6 (a). As for Count One, the base offense level is 20 under
7 Guideline § 2K2.1(a)(4)(A) if the defendant had one prior felony
8 conviction for a controlled substance offense. The parties agree
9 there are no applicable specific offense characteristics under
10 Guideline § 2K2.1(b).

11 (b). As for Count Four, a term of 60 months imprisonment,
12 to run consecutive to whatever term of imprisonment is imposed on
13 Count One, is required by 18 U.S.C. § 924(c) and Guideline § 2K2.4.

14 (c). If the defendant clearly demonstrates a recognition
15 and affirmative acceptance of personal responsibility for the offense
16 conduct within the meaning of § 3E1.1, a 2-level reduction for
17 acceptance of responsibility will be warranted under § 3E1.1(a). If
18 the defendant receives a 2-level reduction for acceptance of
19 responsibility, the parties agree that the defendant is entitled to
20 receive an additional 1-level reduction under § 3E1.1(b). If the
21 defendant receives a 3-level reduction for acceptance of
22 responsibility, the adjusted offense level for Count One will be 19.

23 6. The parties recognize that these understandings regarding the
24 application of the Sentencing Guidelines are not binding on the
25 sentencing judge, and that the defendant will not be entitled to
26 withdraw his guilty plea in the event the Court determines that the

1 Guidelines are to be applied differently from the understandings of
2 the parties set forth herein.

3 7. The parties make no agreement as to the defendant's criminal
4 history category.

5 ACKNOWLEDGEMENTS AND WAIVER OF RIGHTS

6 8. The defendant understands each of the provisions of this
7 amended plea agreement, and each of the provisions has been explained
8 to him by his attorney, Robert Byers. The defendant understands that
9 the maximum possible sentence on Count One is 10 years in prison, a
10 fine of up to \$250,000, a term of 3 years supervised release, a \$100
11 special assessment. As to Count Four, a term of 60 months
12 imprisonment, to run consecutive to whatever term of imprisonment is
13 imposed on Counts One and Two, is required by law, 18 U.S.C. § 924(c).
14 There is also a \$100 mandatory special assessment, a maximum fine of
15 \$250,000, and 3 years supervised release.

16 9. The defendant has discussed the case and all relevant
17 constitutional and other rights with his counsel, and understands that
18 by entering a plea of guilty, he relinquishes the following rights:

- 19 a. to plead not guilty;
20 b. to have a trial by jury;
21 c. to confront, cross-examine, and compel the attendance of
22 witnesses;
23 d. to present evidence;
24 e. to remain silent and refuse to be a witness by asserting
25 the privilege against self-incrimination;
26 f. to be presumed innocent until proven guilty beyond a

1 reasonable doubt.

2 g. to appeal from the sentence imposed by the District
3 Court, except as set forth in paragraph 2 herein.

4 10. The defendant's attorney has fully described to the
5 defendant the nature of the charges and the nature and range of
6 possible sentences. The defendant is satisfied that his counsel has
7 provided competent representation.

8 11. The defendant reaffirms that his guilty pleas to Counts One
9 and Four were made freely and voluntarily, and not as the result of
10 force, threats, assurances, or promises other than the promises
11 contained in this agreement.

12 12. In signing this agreement, the defendant is not under the
13 influence of any drug, medication, liquor, intoxicant, or depressant,
14 and is fully capable of understanding the terms and conditions of this
15 plea agreement.

16 13. All promises here made by each party are made dependent on
17 full performance of the promises made by the other party.

18 14. If the defendant commits any crimes between the time of the
19 entry of his guilty plea and his sentencing, or if the defendant
20 intentionally provides false or misleading information to the
21 Probation Office or to the District Court, the government will have
22 the right to recommend whatever sentence it deems appropriate in this
23 case, including the filing of a motion for an upward departure, and to
24 prosecute the defendant for any criminal conduct. In no event will
25 the defendant be entitled to withdraw his guilty plea pursuant to this
26 Agreement.

1 15. This Amended Plea Agreement constitutes all the terms of the
2 plea bargain between the government and defendant, and the government
3 has made no other representations to defendant or defendant's attorney
4 to induce the defendant to enter into this Agreement. All terms not
5 specifically addressed herein remain open.

6
7
8 DATED: April 3, 1998

William Lusk III
WILLIAM LUSK III
Defendant

9
10
11 DATED: April 3, 1998

Robert Byers
ROBERT BYERS
Attorney for Defendant

12
13
14 MICHAEL J. YAMAGUCHI
United States Attorney

15
16
17 DATED: April 3, 1998

George L. Bevan Jr.
GEORGE L. BEVAN JR.
Assistant United States Attorney

1 MICHAEL J. YAMAGUCHI
2 United States Attorney
3 Attorney for Plaintiff
4
5
6

ORIGINAL
FILED

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,
10 Plaintiff

CR

) OAKLAND VENUE

) C.J. No.: 40048 SBA

11 v.

12
13
14 WILLIAM LUSK,

15 Defendant.
16

) VIOLATIONS: Title 21, United
) States Code, Section 841(a)(1)--
) Possession With Intent to
) Distribute Cocaine; Title 18,
) United States Code, Section
) 924(c)(1)--Carrying Firearm
) During a Drug Trafficking Crime;
) Title 18, United States Code,
) Section 922(g)(1)--Felon in
) Possession of Firearms and
) Ammunition.
)

17 I N D I C T M E N T

18 COUNT ONE: 18 U.S.C. § 922(g)(1)

19 The Grand Jury charges that:

20 On or about December 11, 1996, in the City of Oakland, County
21 of Alameda, State and Northern District of California,

22 WILLIAM LUSK,
23 defendant herein, having previously been convicted of a crime
24 punishable by imprisonment for a term exceeding one year, did
25 knowingly possess two firearms, described as a Browning, 9
26 millimeter, semi-automatic pistol, serial number 75C62337,

1 and a Norinco, 9 millimeter, semi-automatic pistol, serial number
2 311896, and ammunition, in and affecting commerce, in violation of
3 Title 18, United States Code, Section 922(g)(1).

4 //

5 //

6 //

7 //

8 //

9 //

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

1 COUNT TWO: 21 U.S.C. § 841(a)(1)

2 The Grand Jury further charges that:

3 On or about December 11, 1996, in the City of Oakland, County
4 of Alameda, State and Northern District of California,

5 WILLIAM LUSK,

6 defendant herein, did knowingly possess with intent to distribute,
7 a mixture and substance containing a detectable amount of cocaine
8 (powder), a controlled substance, in violation of Title 21, United
9 States Code, Section 841(a)(1).

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

1 COUNT THREE: 21 U.S.C. § 841(a)(1)

2 The Grand Jury further charges that:

3 On or about December 11, 1996, in the City of Oakland, County
4 of Alameda, State and Northern District of California,

5 WILLIAM LUSK,

6 defendant herein, did knowingly possess with intent to distribute,
7 a mixture and substance containing a detectable amount of cocaine
8 base (crack cocaine), a controlled substance, in violation of
9 Title 21, United States Code, Section 841(a)(1).

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

1 COUNT FOUR: 18 U.S.C. § 924(c)(1)

2 The Grand Jury further charges that:

3 On or about December 11, 1996, in the City of Oakland, County
4 of Alameda, State and Northern District of California,

5 WILLIAM LUSK,

6 defendant herein, during and in relation to the drug trafficking
7 crimes charged in Counts Two and Three herein, did knowingly carry
8 a loaded Browning, 9 millimeter, semi-automatic pistol, serial
9 number 75C62337 described in Count One herein, in violation of
10 Title 18, United States Code, Section 924(c)(1).

11
12 DATED:

A True Bill.

13
14
15 FOREPERSON

16 *Michael J. Yamaguchi*
17 *by Charles B. Bued*
18 MICHAEL J. YAMAGUCHI
19 United States Attorney

20 Approved as to Form: *[Signature]*
21 AUSA: GLBEVANJR
22
23
24
25
26